IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 3260 /2003

PETITIONER : Vikas Singh, Son of Shri S.P. Singh, aged about 26 years, resident of Quarter No. 8/C, Street - 1, Sector 7, Bhilai, Distt : Durg (C G).

President, ISPAT AWAS KALYAN SAMITI, Head Office : Quarter No. 8/C, Street - 1, Sector 7, Bhilai Nagar, Distt : Durg (C G).

V E R S U S

RESPONDENTS :

1. Steel Authority of India Ltd Bhilai Steel Plant through its Managing Director, Ispat Bhawan, Bhilai, Distt : Durg (C G).

2. Bhilai Steel Plant through its General Manager, Town Administration Department, House Lease Section, SAIL Employees Leasing of Housing Scheme Bhilai Steel Plant, Distt : Durg (C G).

3. The Town Administrator (Land) Bhilai Steel Plant, Distt : Durg (C G).

4. The Asst. General Manager Town Administration Bhilai Steel Plant, Distt : Durg (C G).

5. The Asst. General Manager, Town Administration, Bhilai Steel Plant, Distt : Durg (C G)

6. The Collector, Durg, Distt : Durg (C G)

7. Sub Divisional Officer, Distt : Durg (C G)

8. C.S.P. Bhilai Nagar, Distt : Durg (C G).

P. R. No. 31/1/03
Presented by Shri V.K. Pandey.
dated 06.1.03

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C/ TO A.G. BILASPUR

सहायक आयुक्त
एस.के. शुक्ला
बिलासपुर (छ.ग.)
बिलासपुर तहसील केम्प

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF CERTIORARI, WRIT, DIRECTION ..... ETC.

HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION NO.3260 OF 2003

PETITIONER: Vikas Singh

Versus

RESPONDENTS: Steel Authority of India Limited and seven others

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POST FOR ORDER ON 24th November, 2003

Sd/-
L.C.BHADOO
Judge

(4)

HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION NO.3260 OF 2003

PETITIONER: Vikas Singh, S/o Shri S.P. Singh,
Aged about 26 years,
R/o Quarter No.8/C, Street-1,
Sector -7, Bhilai,
Distt.: Durg (C.G.)

President,
Ispat Awas Kalyan Samiti,
Head Office: Quarter No.8/C,
Street-1, Sector 7,
Bhilai Nagar, Distt.: Durg (C.G.)

Versus

RESPONDENTS: Steel Authority of India Limited and seven others

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Present: -

Shri V.K. Pandey, Advocate: For the petitioner.

Shri Ranbir Singh Marhas, Govt. Advocate: For respondents 6, 7 & 8.

Before: Hon'ble Shri L.C. Bhadoo, J

O R D E R

(Passed on 24th November, 2003)

1. The petitioner, who is the President of Ispat Awas Kalyan Samiti, Bhilai Nagar, District: Durg, has preferred this writ petition under Article 226/227 of the Constitution of India, challenging the show cause notice dated 02.09.2003 issued by Town Administration Department, Bhilai Steel Plant, asking the members of the petitioner-Association to remove the construction/alteration/ modification/encroachment in various flats constructed and sold by the Ispat Awas Kalyan Samiti to them.

(42)

2. The petitioner's petition is that the Ispat Awas Kalyan Samiti is a registered society under Chhattisgarh Society Registration Adhiniyam, 1973. About 4,335 members of the Ispat Awas Kalyan Samiti entered into an agreement with respondents 2 to 5 and as per the agreement, they have taken the constructed houses as per the Sale Scheme 2001 issued by respondent No.1. After the allotment of these houses, some of the members have constructed certain structures adjoining to their houses/flats and made addition and alterations. They had made applications before respondents 2 & 3, but they have not considered the applications of Lessees. Copy of the lease agreement is Annexure P-3. Even on 23.08.2003, a meeting was convened in presence of respondents 3 to 8, in which the respondents decided to devise a norm for decision on extra construction. Copy of the minutes of the meeting is Annexure P-4. But the norms have not been decided regarding the development of the colonies. On the contrary, respondents 2 & 3 have issued show cause notice regarding the removal of construction at the risk of the members of the Samiti. The petitioner made a representation before respondents 3 to 8 regarding the show cause notice, but they have not considered the same. The members of the Samiti are low paid employees, some of them are retired persons, and some are widows of the members and entire amount, as per the scheme and agreement for extra construction on vacant land, has been paid prior to the application for construction, but the respondents have not considered the same till date. Therefore, the respondents be restrained from acting upon the said show cause notices.

3. I have heard the learned counsel for the parties and perused the petition along with the documents.

4. It is an admitted position that the members of the petitioner-Society who are 4,335 in number, entered into an agreement with respondents 2 to 5 and as per the agreement they have taken the constructed

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houses as per the Sale Scheme 2001 and it is also an admitted position that these members have constructed some structures in the adjoining area. The show cause notice (Annexure P-1) shows that the members of the Samiti have constructed certain structures on the adjoining lands without prior permission of the Administration and also in violation of the agreement and the scheme. If we look into the Sale Scheme 2001, under which the houses were allotted to the members of the Society, in sub-rule (13.1) of Rule 13 of the Rules & Conditions of the Scheme, it has been mentioned that the allottee/Patta holder will not change the structure of the house or make any addition/ alteration, but the Administration can after enquiry into the application of the members can permit additional construction to a certain extent and the house will not be utilized for any purpose other than the residential purpose and on the violation of the conditions of the Patta, even the allotment of house can be cancelled. Along with this condition, other 15 conditions are there. Even in sub-clause (a) of clause-2 of the lease agreement which was entered into between the members of the Society and the Steel Authority of India Limited, it has been specifically mentioned, "the houses/flats shall not be used for any purpose other than residence. The lessee shall not be entitled to subdivide the dwelling unit. The lessee shall in no way encroach upon the common portion or services or unauthorised encroachments are liable to be removed at lessee's cost." Therefore, in view of specific conditions in the agreement as well as in the scheme, in case, the members are found to be encroaching upon the common portion or some addition/alteration/construction is made then they are liable to cancellation of the allotment of houses/flats or removal of such structure at their cost.

5. As has been argued by the learned counsel for the petitioner that notices are being issued to those members and allottees who have been made addition/alteration and encroached upon the adjoining lands,

therefore, in the circumstances, whether, it is in fitness of things that this Court should invoke extra ordinary jurisdiction that too on the request of the President of Samiti, the answer to this question can only be negative, for the reason that first of all, if any encroachment/addition/ alteration or violation of rules of the scheme of lease deed is committed then the members are liable to such action which is envisaged under the scheme and the agreement. Individual cases can be looked into, only when the individual cases are filed as to what extent the violation has taken place, whether it is in the permissible limits or whether the construction comes under the violation; all these are disputed facts which require investigation. By a general/composite order in writ jurisdiction, no direction or writ can be issued restraining the respondents not to take action against the allottes who have violated the agreement and Scheme, as they are taking action under the rules of the Scheme and agreement clause.

6. Therefore, the disputed questions cannot be enquired into in this writ petition. The number of members of the Society is 4,335. So this requires enormous exercise of each individual case which cannot be gone into in this writ jurisdiction. I am, therefore, of the opinion that this writ petition is liable to be dismissed on this ground only. The petitioner/Society is at liberty to approach before the appropriate Court and appropriate Forum, if they are so advised.

7. The writ petition is dismissed. There is no order as to costs.

Sd/-
L.C.BHADOO
Judge

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